IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.839 OF 2004
IN
SUMMARY SUIT NO.2251 OF 2004

R.J.Tubes and Rods P.Ltd. ..Plaintiffs

Vs.

Rasiklal Kantilal and Co. ..Defendants

Mr.Birendra Saraf i/b M/s.Kiran Jain and Co. for the plaintiffs

Mr.Ahmed Sayyed i/b Halai and Co. for the defendants

CORAM : S.U.KAMDAR, J
DATED : 17TH OCTOBER, 2005

P.C.:

1. The present suit is filed on dishonoured cheque for Rs.5 lacs. It is the case of the plaintiffs that the said cheque was issued in respect of goods sold and delivered which was indicated by invoice dt. 24.4.01. The defendants have raised the following defences:

2. Firstly, that the cheque was issued as advance payment in respect of goods to be delivered. However, the said goods were never

delivered. The aforesaid contention is without any merits. Firstly, because bill is dt.24.4.01. Cheque is dt.24.5.01 and therefore the question of any advance payment does not arise. In that view of the matter, in so far as cheque is concerned under the provision of Negotiable Instrument Act, consideration is presumed.

3. The next contention is that the suit is barred by law of limitation. This argument of limitation is raised on the basis that invoice is dt.24.4.01 and the delivery of the goods is supposed to have been also effected on 24.4.01 whereas suit is lodged on 24.5.04 i.e. after a period of more than 3 years. In respect of this contention also I find no merits because the suit is based on dishonoured cheque. Cheque is admittedly dishonoured on 28.9.01. Cause of action to file the suit therefore arises on 28.9.01 and therefore suit is within time.

4. The third defence raised is there is a running account between the parties. In view of the fact that cheque is issued independently and

not to any such running account thus in respect of claim arising under dishonoured cheque question of running account does not arise. The last defence raised is that the invoice itself is fabricated. In respect of the said defence also I find no merits in as much as once cheque is issued argument that invoice is fabricated cannot be accepted. However, with a view to give an opportunity to the defendants, I direct the defendants to deposit a sum of Rs.7.0 lacs within 4 weeks, failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.